

1 United States of America,)
2)
3 Plaintiff,)
4 v.)
5 THOMAS GROSSI, Jr.)
6 Defendant.)
7 _____)

No. CR-04-40127 DLJ

ORDER

8 On January 10, 2006 Grossi was convicted by a jury of a
9 violation of 21 U.S.C. § 856(a)(2), Owner or Lessee making
10 Property Available for the Manufacture of Marijuana. He also
11 subsequently plead guilty to an additional count of 21 U.S.C.
12 § 856(a)(2). In May 2007, this Court sentenced Grossi to 30
13 months of imprisonment, followed by a 3 year term of supervised
14 release. Grossi was released from custody on October 26, 2009
15 and began to serve his period of supervised release.

16 Grossi has now filed a motion for early termination of his
17 supervised release pursuant to 18 U.S.C. § 3583(e)(1). On
18 January 28, 2011 this Court held a hearing on the motion.
19 Grossi was represented at the hearing by Edward Burch and the
20 government was represented by Keslie Stewart. At the hearing
21 the Court requested that the Probation Office provide the Court
22 with the position of that office on the Motion. The Probation
23 Office has now submitted a letter to the Court outlining its
24 position. Having considered the submissions and arguments of
25 the parties, the Court finds the following.

I. Legal Standard

Modification of a term of Supervised Release is governed by 18 U.S.C. § 3883(e)(1) which provides:

(e) Modification of conditions or revocation.--The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)--

(1) terminate a term of supervised release and discharge the defendant released at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice.

18 U.S.C. § 3883(e)(1).

District courts have broad discretion to alter the conditions of a defendant's supervised release. U.S. v. Miller, 205 F.3d 1098 (9th Cir. 2000).

II. Discussion

Grossi's request for a modification of his term of supervised release is predicated on two issues. First Grossi asserts that he needs a modification in order to be able to spend time with his elderly mother who lives outside of the Northern District. At the hearing the Court heard from the Probation Office, which indicated that Grossi's need to visit with his mother could be accommodated under the terms of his current supervision. Subsequent to the hearing, Grossi filed an addendum to his motion, again reiterating that the as it related to visiting his mother, the requirements of the Probation Office were too burdensome and so the Court should

1 terminate his supervision.

2 The Court has received further information from the
3 Probation Office which sets out reasonable restrictions which
4 balance Grossi's need to be available to his elderly mother
5 with the Probation Office's needs to be aware of his
6 whereabouts. The Court is satisfied that these restrictions
7 are reasonable and finds therefore that this issue does not
8 require the Court to modify the term of Grossi's supervised
9 release.

10 The only other basis articulated by Grossi for the request
11 for early termination is that he has been on supervised release
12 for a year and during that time he has performed without any
13 violation of his terms of supervised release. The fact that
14 Grossi has been in compliance with the terms of his supervised
15 release ordered by the Court is not in dispute.

16 Nonetheless, the Probation Office opposes Grossi's
17 request, stating that the position of the Probation Office is
18 that a request based only on the defendant's compliance with
19 the terms of his release, without more, is insufficient to
20 merit the support of the Probation Office. The Probation
21 Office notes that its policy is rooted in the Second Circuit
22 case, United States v. Lussier, 104 F.3d 32, 36 (2nd Cir.1997).

23 The Court in Lussier held that:

24 Section 3583(e) provides the district court with
25 retained authority to revoke, discharge, or modify
26 terms and conditions of supervised release following
27 its initial imposition of a supervised release term
28 in order to account for new or unforeseen
circumstances. Occasionally, changed circumstances-
for instance, exceptionally good behavior by the

1 defendant or a downward turn in the defendant's
2 ability to pay a fine or restitution imposed as
3 conditions of release-will render a previously
4 imposed term or condition of release either too harsh
or inappropriately tailored to serve the general
punishment goals of section 3553(a).

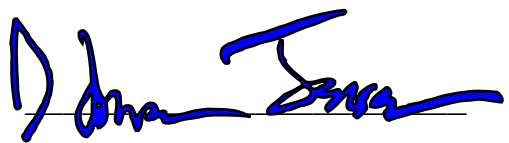
5 Lussier, 104 F.3d at 36. See also U.S. v. Miller
6 205 F.3d 1098 (9th Cir. 2000).

7 Here Grossi has demonstrated no changed circumstances.
8 Generally, in accordance with Lussier, courts looking at this
9 issue have concluded that an exercise of discretion to
10 terminate supervision early is warranted only in cases where
11 the defendant demonstrates changed circumstances, such as
12 exceptionally good behavior. See United States v. Atkin, 38
13 Fed. Appx. 196, 2002 WL 378076 (6th Cir.2002) (unpublished)
14 FN1, citing United States v. Lussier, 104 F.3d 32, 36 (2nd
15 Cir.1997). Mere compliance with the terms of supervised
16 release is what is expected, and without more, is insufficient
17 to justify early termination. See Karacsonyi v. United States,
18 152 F.3d 918, 1998 WL 401273 (2nd Cir. June 10, 1998)
19 (unpublished); United States v. Rasco, 2000 WL 45438 (S.D.N.Y.
20 Jan.19, 2000); United States v. Yung, 1998 WL 422795 (D.Kan.
21 Jun.12, 1998).

22 This Court concurs with the position of the Probation
23 Office that Grossi has not demonstrated any exceptional
24 circumstances sufficient for the Court to exercise its
25 discretion to terminate his supervised release. Therefore the
26 Motion for Early Termination of Supervised Release is DENIED.

IT IS SO ORDERED.

Dated: February 18, 2011



D. Lowell Jensen
United States District Judge